

REMARKS/ARGUMENTS

Applicants hereby elect Group IV, claims 50-53. Applicants respectfully point out their belief that revised claims 7-20, 24-31, 56-65 and new claims 66-67 also correspond to this elected Group.

In further response to the Restriction Requirement mailed September 21, 2006, Applicants acknowledge the asserted requirement for an election of species to one of 22 species of "tumor antigens from a cancer".

Applicants traverse this election of species by pointing out that a requirement for an election of species must be based upon 37 C.F.R. § 1.141(a) and § 1.146. These sections expressly recognize that "a reasonable number" of species may be claimed along with an allowable generic claim. Applicants respectfully note that there has been no demonstration that "more than a reasonable number of species" is encompassed by the pending claims. Therefore, the species election requirement is deficient, because no more than a reasonable number of species is claimed.

Moreover, and as previously stated, Applicants regard their invention as including the subject matter of genus claims 50, 51, and 53. Any attempt to restrict the subject matter therein to be merely alleged "species of tumor antigens from a cancer" would deny Applicants the ability to seek claims directed to what they regard as the invention. See *In re Weber* (580 F.2d 455, 198 USPQ 328 (CCPA 1978)) and *In re Haas* (580 F.2d 461, 198 USPQ 334 (CCPA 1978)), and the discussion at MPEP 803.02. These decisions clearly set forth that a restriction requirement cannot be used to divide a single claim.

Moreover, and as set forth at 37 C.F.R. § 1.146, election of species is discretionary and results in a restriction *only* "if no claim to the genus is found to be allowable." Thus Applicants respectfully submit that the requirement for an election of species is for purposes of facilitating search and examination. If no prior art is found to anticipate or render obvious the elected species, Applicants respectfully submit that the search of the claims should be extended to the next species to allow for consideration of the generic claim.

In light of the above, Applicants respectfully submit that the requirement for an election of species among "tumor antigens from a cancer" is misplaced and should be withdrawn.

In the event that the election of species requirement is maintained, Applicants respectfully elect species "(r) lung cancer" with traverse for the reasons provided above.

Based upon this election of "lung cancer" with traverse, claims 7-20, 24-31, 56-65 and new claims 66-67 are readable thereon.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6151.

Respectfully submitted,



Kawai Lau, Ph.D.
Reg. No. 44,461

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 858-350-6100
Fax: 415-576-0300
60995993 v1